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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KJELL LINDSKOG

Appeal 2009-010538
Application 10/502,018
Technology Center 2600

Before MAHSHID D. SAADAT, ELENI MANTIS MERCADER, and CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-20, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to a process for opening transportable containers used for transporting valuable objects (Spec 1:3-9). Claim 1, which is illustrative of the invention, reads as follows:

> 1. A process of opening a container for a transportion [sic] of valuable objects or valuable documents, wherein the container (1) includes a first electronic unit (2) which functions to allow deactivation of an alarm system and/or opening of the container, and wherein a first container-opening key (10) includes a second electronic unit (12) adapted to communicate with the first electronic unit (2) when initiating opening of said container, said container including means for destroying the valuable objects or documents contained therein unless said alarm system is deactivated by a full code-set (ABCD) when opening the container, characterised by a step of using a stationarily disposed second key (20) together with the first key (10) for simultaneously completing the full code-set (ABCD) required to initiate deactivation of said alarm system and/or opening of the container (1) without destroying the valuable objects or documents within said container.

The Examiner relies on the following prior art in rejecting the claims:

Schesso	US 3,654,880	Apr. 11, 1972
Kniffin	US 5,705,991	Jan. 6, 1998
Lacombe	US 6,430,689 B1	Aug. 6, 2002

Claims 1-4 and 11 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schesso in view of Lacombe.

Claims 5-10 and 12-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schesso in view of Lacombe, and in further view of Kniffin.

Rather than repeat the arguments here, we make reference to the Briefs (App. Br. filed Aug. 13, 2008; Reply Br. filed Dec. 22, 2008) and the Answer (mailed Oct. 28, 2008) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

Appellant has only argued the patentability of independent claim 1 (App. Br. 6-11). Therefore, we select claim 1 as the representative claim, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

The pivotal issue presented by Appellant's arguments is whether Lacombe teaches or suggests, to the person or ordinary skill in the art, "a step of using a stationarily disposed second key together with the first key for simultaneously completing the full code-set," as recited in claim 1.

FINDINGS OF FACT (FF)

1. Lacombe discloses a mobile station 6 having a terminal 7 with a keyboard, a microprocessor, and a smart card reader 9 (col. 4, ll. 12-14).

2. Lacombe discloses that an addressee or authorized user 10 is assigned a confidential code 12 (col. 4, ll. 17-19; col. 5, ll. 13-14) which is

input into the keyboard of the terminal 7 as a part of the process of opening a transportable container 1 (col. 5, ll. 31-33).

3. Lacombe discloses that the authorized user 10 is issued an encrypted smart card 11 loaded with cryptographic data necessary for opening the container 1 (col. 4, ll. 31-41, 55-67).

4. Lacombe discloses that to open the container 1, the encrypted smart card 11 is inserted by the authorized user 10 into the card reader 9 of the terminal (col. 5, ll. 30-31) which reads the encrypted data as a part of the process of opening the container (col. 5, ll. 36-40).

5. Lacombe discloses that the authorized user 10 enters his confidential code 12 while the smart card 11 is being read by the card reader 9 (col. 5, ll. 29-33, 46-48).

PRINCIPLES OF LAW

> [The USPTO] applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997). "Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim." *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

ANALYSIS

Appellant contends that Lacombe does not teach or suggest simultaneously inputting a first portion of a code by a first key and a second portion of the code by a second key, the second key being stationarily located at predetermined location (App. Br. 9). Appellant further contends that Lacombe teaches away from the claimed invention because Lacombe describes an arrival station that is delivered to the intended recipient when the container to be opened is delivered (App. Br. 9-10). Finally, Appellant contends that the Examiner has exercised impermissible hindsight in combining the references (App. Br. 11).

The Examiner responds that the limitation of "a second key stationarily positioned at a predetermined location," relied on by Appellant, is not recited in claim 1 (Ans. 9). The Examiner also finds that Lacombe's authorized user's encrypted smart card provides one portion of the code and the confidential code entered by the authorized user into Lacombe's terminal, at the same time the smart card is read by the terminal, provides another portion of the code (Ans. 11-12).

We agree with the Examiner. While the claim requires that the second key is "stationarily disposed" as contended by Appellant (Reply Br. 1) the recited key is not limited to a predetermined or fixed location (*cf. id.*). The claim includes no recitation as to the time span of the second key's stationary disposition or degree to which, or even whether, it is affixed in the location at which it is stationary. Giving the claim its broadest reasonable interpretation consistent with the Specification, *see Morris*, 127 F.3d at 1054, we find that the claim only requires that the second key be stationarily disposed for the amount of time necessary for the code to be provided for

opening the transportable container. We may not import into the claims limitations from the Specification, *SuperGuide*, 358 F.3d at 875 (*see, e.g.*, Spec. 4:5-12).

Accordingly, we find that Lacombe discloses a first key (Lacombe's terminal; FF 1) providing a first portion of a code (FF 2) and a second key (Lacombe's smart card; FF 3) providing a second portion of the code (FF 4), and that the code portions are provided simultaneously (FF 5). We further find that at the time the codes are provided, Lacombe's smart card is stationarily disposed within the terminal (FF 5). Furthermore, Lacombe's terminal would be understood by those skilled in the art to be stationarily disposed at the authorized user's location at the time the portions of the code are provided for opening the container. As such, Lacombe's terminal may alternatively be the second key providing the second portion of the code (FF 1, 3) and Lacombe's smart card the first key providing the first portion of the code (FF 2, 4). We also find that a person having ordinary skill in the art would understand Lacombe's smart card and terminal to be electronic units, as recited in claim 1. Accordingly, we find the Examiner's articulated rationale (Ans. 3-5) to be reasonable.

In view of the foregoing, we find unpersuasive Appellant's allegations that Lacombe teaches away from the claimed invention and that the Examiner's rejection was based on impermissible hindsight. Therefore, we sustain the rejection of claim 1, and of dependant claims 2-20 not argued separately.

ORDER

The decision of the Examiner to reject claims 1-20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED

babc